UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PVH CORP., Interpleader-Plaintiff, -v- LEAH KEITH-HOULE and ESTATE OF STEVEN HOULE, Interpleader-Defendants.	HON. RICHARD J. SULLIVAN, U.S.D.J. Civil Action No. 1:16-cv-01401

PVH CORP.'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR ATTORNEYS' FEES

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Interpleader-plaintiff PVH Corp. ("PVH") respectfully submits this memorandum of law in support of its motion for attorneys' fees and expenses incurred in connection with bringing an interpleader complaint against defendants Leah Keith-Houle and the Estate of Steven Houle ("Defendants") (ECF No. 1).

PRELIMINARY STATEMENT

PVH brought a Complaint for the purpose of identifying the rightful recipient of proceeds from a certain qualified savings and retirement plan and related trust known as the PVH Associates Investment Plan ("the Plan") belonging to former PVH employee, Steven Houle. As a disinterested stakeholder in a federal interpleader action, PVH is entitled to a reasonable award of attorneys' fees and costs incurred in bringing the action. Pursuant to the Court's direction, PVH hereby moves for an award of $12,066 in fees and $637.87 in costs, to be paid from the plan proceeds.

FACTS AND PROCEDURAL HISTORY

Steven Houle was employed as a warehouse supervisor with PVH from December 1, 2006 until April 18, 2013. Complaint ("Compl.") ¶ 9. He enrolled in the Plan on March 3, 2007. *Id.* Steven Houle's then wife, Leah Keith Houle, was named as his sole primary beneficiary. *Id.* ¶ 10. On September 11, 2013, Steven Houle and Leah Keith Houle divorced. *Id.* ¶ 11. Steven Houle's beneficiary election was not changed following his divorce. *Id.* ¶ 12. On October 8, 2014 Steven Houle died. *Id.* ¶ 13. On or about January 9, 2015, PVH received a demand from the Estate of Steven Houle (the "Estate") for the proceeds of the Plan ("Plan Proceeds") stating that the Estate is "officially objecting to the payout . . . to the ex-wife of Mr. Steven Houle". According to the Estate, Leah Keith Houle waived any rights to the Plan Proceeds in the Divorce Decree. *Id.* ¶ 14.

On February 23, 2016, PVH filed a Complaint for Interpleader pursuant to 28 U.S.C. § 1335. By letter dated May 26, 2016, PVH informed the Court that both Defendants had advised that they did not wish to participate in the action. (ECF No. 12.) Accordingly, no formal answer was filed by any defendant. By Order and Opinion dated June 6, 2016, in reliance on the Supreme Court's decision in *Kennedy v. Plan Administrator for DuPont Savings and Investment Plan*, 555 U.S. 285 (2009), this Court held that "Leah Keith-Houle is the proper beneficiary entitled to Mr. Houle's proceeds under the Plan." (ECF No. 15.) The Court further instructed that PVH shall file its contemplated motion for attorneys' fees no later than June 13, 2016. *Id.*

ARGUMENT

I. PVH IS ENTITLED TO RECOVER ATTORNEYS' FEES INCURRED IN CONNECTION WITH BRINGING AN ACTION PURSUANT TO THE FEDERAL INTERPLEADER STATUTE.

In general, a disinterested stakeholder "who has expended time and money participating in a dispute 'not of his own making and the outcome of which has as (sic) no impact on him'" is entitled to a reasonable award of attorneys' fees. *Fid. Brokerage Servs., LLC v. Bank of China*, 192 F. Supp. 2d 173, 183 (S.D.N.Y. 2002) (quoting *Companion Life Ins. Co. v. Schaffer*, 442 F. Supp. 826, 830 (S.D.N.Y. 1977)); *see also Guardian Life Ins. Co. of America v. St. Ange*, No. 11 Civ. 3468, 2012 WL 463894, *6 (S.D.N.Y. Feb. 8, 2012) ("[A] federal district court has discretion to award reasonable attorneys' fees and costs to a disinterested stakeholder in an action brought under the interpleader statute." (internal quotations omitted)); *Gelfgren v. Republic Nat'l Life Ins. Co.*, 680 F.2d 79, 81 (9th Cir. 1982). Attorney's fees and costs "are generally awarded against the interpleader fund." *Septembertide Publ'g v. Stein & Day, Inc*., 884 F.2d 675, 683 (2d Cir. 1989). Attorneys' fees in an interpleader action are appropriate when "(1) the party seeking fees is a disinterested stakeholder, (2) who had conceded liability, (3) has deposited the disputed funds into court, and (4) has sought a discharge from liability." *Id.*

However, courts need not award fees where the interpleader-plaintiff's "claims are of the type that arise in the ordinary course of business." *Companion Life Ins. Co.*, 442 F. Supp. at 830. For example, "[c]onflicting claims to the proceeds of a[n] [insurance] policy are inevitable and normal risks of the insurance business." *Id.*

PVH meets all the requisites for an award of its attorneys' fees and costs. PVH is clearly a "disinterested stakeholder." PVH had no interest in which of the competing claimants received the Plan Proceeds and did not dispute the amount of the Plan Proceeds. Additionally, the interpleader action was necessary for PVH to avoid subjecting itself to conflicting, adverse claims. Indeed, regardless of the merit of the Estate's claim to the Plan Proceeds, PVH would still be potentially subject to multiple lawsuits if it had made the decision to award benefits to only one of the claimants. *Cf. Paul Revere Life Ins. Co. v. Riddle,* 222 F. Supp. 867, 868 (E.D. Tenn. 1963) ("The plaintiff had a right as a stakeholder, acting in good faith, to maintain this action in interpleader to avoid the vexation of and expense of resisting the adverse claims, even though its officials believed only one of them was meritorious."). The Court here also determined that there was no need to deposit the funds into court, which may have affected the tax deferred nature of the proceeds of the savings and retirement funds. Finally, unlike in the insurance context, a dispute over the Plan Proceeds was not "inevitable" or expected, nor was the dispute the fault of PVH. Indeed, PVH sought to have the Estate engage with Defendant Leah Keith-Houle to resolve the dispute before filing the action. *See* Declaration of Robert J. Kipnees ("Kipnees Decl."), ¶ 3. Once the complaint was filed, neither defendant was willing to appear and argue for their respective positions. Accordingly, this Court should grant PVH's application for fees.

II. THE ATTORNEYS' FEES REQUESTED BY PVH ARE REASONABLE.

The granting and amount of fees to be awarded in an interpleader action is committed to the "sound discretion of the district court." *Travelers Indem. Co. v. Israel*, 354 F.2d 488, 490 (2d Cir. 1965). "The party seeking fees bears the burden of demonstrating that its requested fees are reasonable." *Hartford Life Ins. Co. v. Pottorff*, No. 5:13-CV-77 MAD/DEP, 2014 WL 1393751, at *6 (N.D.N.Y. Apr. 9, 2014). In interpleader actions, examples of compensable fees include "the preparation of a petition, the deposit in court or posting of a bond, service on the claimants, and the preparation of an order discharging the stakeholder." *Weininger v. Castro*, 462 F. Supp. 2d 457, 502 (S.D.N.Y. 2006) (internal quotations omitted). A reasonable attorney's fee is arrived at by multiplying the number of hours worked by an appropriate hourly rate. *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); *Blum v. Stenson*, 465 U.S. 886, 888 (1984). The result of this computation is called the "lodestar" which, absent strong evidence to the contrary, is presumed to yield a reasonable fee. *City of Burlington v. Dague*, 505 U.S. 557, 562 (1992). In reviewing a fee application and calculating a lodestar, the court must "examine the particular hours expended by counsel with a view to the value of the work product of the specific expenditures to the client's case." *Santillan v. Henao*, 822 F. Supp. 2d 284, 299 (E.D.N.Y. 2011). A reasonable hourly rate is "the rate a paying client would be willing to pay . . . . bear[ing] in mind that a reasonable paying client wishes to spend the minimum necessary to litigate the case effectively." *Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cnty. of Albany*, 522 F.3d 182, 190 (2d Cir. 2008).

As set forth above, PVH accomplished its goal of having this Court determine the rightful recipient of the Plan Proceeds. Lowenstein Sandler LLP spent approximately 24 hours drafting the Complaint and communicating with the parties and the Court, resulting in fees of $12,066 and $637.87 in disbursements.[1] Kipnees Cert., Exs. A-B (Invoices and Prebills). The time spent initiating this matter, including attempting to engage Defendants in the action, was eminently reasonable and necessary to bringing the interpleader action. Three attorneys worked on this matter: partner Robert J. Kipnees, whose hourly rate is $700; partner Andrew E. Graw, whose hourly rate is $715, and associate Naomi D. Barrowclough, whose hourly rate is $420. *See* Kipnees Cert., Exs. A-B. These rates are comparable to, if not below, rates charged by other New York firms.

CONCLUSION

For the foregoing reasons, PVH respectfully submits that its Motion for Attorneys' Fees should be granted and PVH should be awarded attorneys' fees and costs in the amount of $12,703.87.

s/ Robert J. Kipnees

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[1] The total combined fees and costs, $12,703.87, represents 26% of the Plan Proceeds.